

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In re the Marriage of:

No. 24155-6-III

GREGORY F. BENOIT,

Appellant,

and

JOLEE BENOIT,

Respondent.

Division Three

UNPUBLISHED OPINION

SCHULTHEIS, J. — Gregory and Jolee Benoit divorced after six years of marriage. The trial court awarded Ms. Benoit monthly maintenance payments until their youngest child entered school, and ordered Dr. Benoit to pay the long distance transportation costs for visits with the children, who live with Ms. Benoit in Georgia. Dr. Benoit appeals, contending the maintenance award is not supported by the record and the award of transportation expenses is a violation of statute. Because we conclude that the award of transportation expenses constitutes an abuse of discretion, we reverse and remand for compliance with RCW 26.19.080(3).

Facts

The Benois married in June 1997. Dr. Benoit, a veterinarian, purchased a Spokane animal clinic after the marriage. The couple had two children ages six and four at the time of the divorce. Although Ms. Benoit had a college degree in finance and had worked in sales for several years before marriage, the couple decided that she would be a stay-at-home mother after the children were born.

In July 2003, Ms. Benoit moved to her home state of Georgia with the children. Dr. Benoit intended to join her within a few months. Instead, he stayed in Spokane and the couple legally separated in November 2003. The trial court entered a temporary order in March 2004 awarding Ms. Benoit \$3,200 per month for maintenance and an additional sum for child support.

Mr. and Ms. Benoit entered into a settlement agreement in March 2005 that resolved all property issues. After dividing the community and separate property, the agreement provided that Dr. Benoit would make an equalization payment of \$170,000 to Ms. Benoit.

Trial on the remaining issues of maintenance and child support commenced in late March 2005. Ms. Benoit testified that she needed monthly maintenance payments at least until both children were in school. She also asserted that back pain prevented her from working in her former retail position. Dr. Benoit responded that he had no ability to pay,

Ms. Benoit had no need due to the property settlement, and maintenance was not justified after a marriage of such short duration. The trial court found that Ms. Benoit had an immediate need for maintenance while she was serving as a stay-at-home mother. It awarded her \$3,000 per month through August 2006, the date when the youngest child was due to start school. Dr. Benoit was additionally ordered to pay all transportation expenses during the period of maintenance. After the youngest child entered school, the parents were to share transportation expenses according to their proportionate shares of income.

Dr. Benoit appeals the orders on maintenance and transportation expenses.

Maintenance

Pursuant to RCW 26.09.090(1), a trial court may grant a maintenance order in an amount and for such a period of time as the court deems just. In deciding whether to award maintenance, the court must consider “all relevant factors including but not limited to” the financial resources of the parties; the age, financial obligations, and physical and mental condition of the spouse seeking maintenance; the standard of living enjoyed during marriage; the duration of the marriage; and the time needed for the spouse seeking maintenance to find appropriate employment. RCW 26.09.090(1)(a)-(f); *In re Marriage of Sheffer*, 60 Wn. App. 51, 53-54, 802 P.2d 817 (1990). We review an award of maintenance for abuse of discretion. *In re Marriage of Zahm*, 138 Wn.2d 213, 226-27,

978 P.2d 498 (1999).

In this case, the trial court ordered Dr. Benoit to pay Ms. Benoit \$3,000 per month for 17 months, corresponding to the period of time her youngest child would be at home before he started kindergarten. The court found, based on the evidence, that the parties had agreed that Ms. Benoit should stay home with the children until they were in school. Although this agreement of the parties is not one of the factors listed in RCW 26.09.090, its effect on the issue of Ms. Benoit's immediate employment is certainly relevant.

Dr. Benoit's contention that the trial court failed to consider the factors of RCW 26.09.090 is belied by the record. A trial court is not required to make specific findings on each of the statutory factors. *In re Marriage of Mansour*, 126 Wn. App. 1, 16, 106 P.3d 768 (2004). Here, despite the trial court's failure to address each factor in the findings of fact and conclusions of law, the court's oral ruling indicates that the factors were considered. For instance, the trial court found that the marriage was short-term, that Ms. Benoit had a college degree in finance, and that she had worked in her field before the marriage. These findings relate to RCW 26.09.090(1)(b) (time necessary to acquire training and find employment) and RCW 26.09.090(1)(d) (duration of the marriage) and do not tend to support maintenance.

On the other hand, the trial court found that Ms. Benoit has a back problem that prevents her from working in her former employment (RCW 26.09.090(1)(e): physical

condition of the spouse seeking maintenance). It also found that Dr. Benoit had from \$2,000 to \$3,000 of discretionary income each month after expenses, and that his veterinary practice was—and would continue to be—lucrative (RCW 26.09.090(1)(f): ability of the obligor spouse to meet his or her needs while paying maintenance).

These findings are supported by the record, which includes income tax information on the veterinary business showing healthy growth, and which shows that Dr. Benoit's average gross monthly income is \$11,000. With deductions, his net monthly income is approximately \$7,500 before child support and maintenance deductions.

Dr. Benoit contends his monthly expenses total \$7,000, leaving only \$500 for the child support payment of \$842 and the maintenance payment of \$3,000. The trial court apparently failed to consider approximately \$3,500 in monthly taxes on Dr. Benoit's income when it concluded that he had \$2,000 to \$3,000 available each month for maintenance. Although the court noted that Ms. Benoit challenged some of Dr. Benoit's declared monthly expenses, the court declined to reach a finding on those issues. The trial court instead concluded, "In any event, I think the business is doing well; I'm not concerned that he in the future will be financially strapped." Report of Proceedings (RP) at 169.

Despite the trial court's error in computing Dr. Benoit's monthly financial resources, it is clear that the court would have imposed maintenance anyway because of

the couple's agreement that Ms. Benoit should serve as the at-home parent until the children reached school age. As the court stated, "[T]he only reason I'm ordering maintenance, frankly, is because of the parties' agreement that she would stay home with the children until [the youngest child] starts school. If it weren't for that fact, Ms. Benoit, I would not be ordering continued maintenance here." RP at 169.

As stated in RCW 26.09.090(1), the only limit on the trial court's determination of the amount and duration of maintenance is that the award be just. *In re Marriage of Vander Veen*, 62 Wn. App. 861, 867, 815 P.2d 843 (1991). A maintenance order attempts to equalize the parties' standard of living for an appropriate length of time. *In re Marriage of Estes*, 84 Wn. App. 586, 593, 929 P.2d 500 (1997). Here, the parties agreed to the distribution of community and separate property. Accordingly, we may assume that they viewed this distribution as equitable. Even so, the lucrative prospects for Dr. Benoit's veterinary practice, balanced against Ms. Benoit's lack of income while staying home with the children, support the justness of the maintenance award.¹ In light of the parties' agreement that Ms. Benoit should dedicate her time to child-rearing, the trial

¹ Dr. Benoit assigns error to the trial court's consideration of two financial declarations filed by Ms. Benoit, but not specifically offered as evidence at trial. The trial court properly considered all relevant evidence in the record when determining the maintenance award. See *In re Marriage of Thomas*, 63 Wn. App. 658, 660, 821 P.2d 1227 (1991) (we will accept the trial court's findings as verities on appeal as long as they are supported by substantial evidence *in the record*).

court's award of \$3,000 in monthly maintenance (\$200 less than the temporary maintenance awarded during separation) until the youngest child enters kindergarten was not an abuse of discretion.

Transportation Costs

Dr. Benoit next challenges the trial court's order that he pay all long distance travel expenses for visitation with the children during the period of maintenance. RCW 26.19.080(3) provides that long distance transportation costs must be shared by the parents in the same proportion as the basic child support obligation. *In re Marriage of Scanlon*, 109 Wn. App. 167, 181, 34 P.3d 877 (2001). The statute's language is mandatory and generally allows no room for the court's exercise of discretion. *Id.* If the trial court has found grounds to deviate from the basic support obligation, it may also deviate from the allocation of transportation costs. *In re Marriage of Casey*, 88 Wn. App. 662, 667-68, 967 P.2d 982 (1997).

Here, however, the trial court specifically found no reason to deviate from the standard support obligation. Consequently, the trial court's order requiring Dr. Benoit to pay all long distance transportation expenses must be reversed and remanded for allocation in the same proportion as the basic child support obligation. *Scanlon*, 109 Wn. App. at 181; RCW 26.19.080(3).

Attorney Fees

Ms. Benoit requests attorney fees on appeal, citing RAP 18.1 and RCW 26.09.140. Pursuant to the mediation agreement, each party was responsible for his or her fees and costs in the dissolution proceedings. We find merit in Dr. Benoit's issues raised on appeal and see no reason to depart from the original intention of the parties. *See Mansour*, 126 Wn. App. at 17 (in deciding whether to award attorney fees and expenses on appeal of a dissolution proceeding, we examine the merit of the issues on appeal and the relative financial resources of the parties). Accordingly, we deny Ms. Benoit's request for attorney fees and expenses on appeal.

Reversed and remanded for compliance with RCW 26.19.080(3).

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

Schultheis, J.

WE CONCUR:

Sweeney, C.J.

Kulik, J.